

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 COPPER SANDS HOMEOWNERS)
ASSOCIATION, INC., *et al.*,)

5)
6 Plaintiffs,)
7)

8 vs.)

9 COPPER SANDS REALTY, LLC, *et al.*,)

Defendants.)
10

Case No.: 2:10-cv-00510-GMN-LRL

ORDER

11 **INTRODUCTION**

12 Before the Court is Defendant CBC Investments, Inc.'s Motion to Dismiss for Lack of
13 Personal Jurisdiction (#30). Plaintiffs filed an Opposition (#38) and Defendant a Reply (#43).
14 The Court has considered the pleadings of both parties and GRANTS Defendant's Motion,
15 dismissing Defendant from the suit without prejudice.

16 **BACKGROUND**

17 This action is based on alleged misconduct in the conversion, sale and financing of a
18 condominium project. Plaintiffs are unit owners of the condominium project, and their
19 homeowners association. The developer of the condominiums was Defendant Copper Sands
20 Realty, LLC, which was managed by Defendants Robert Colucci and Dario Deluca. Colucci
21 and Deluca appear to also participate in the management or ownership of several other business
22 entities. (*See Wike Aff.*, #38). One of the entities that Defendants Colucci and Deluca have
23 some role in managing or owning is Defendant CBC Investments, Inc. ("CBC"). On this basis
24 Plaintiffs added CBC as a Defendant in this case.

25 CBC brings the instant motion arguing that they are not subject to personal jurisdiction in

1 Nevada. CBC is a California corporation and alleges that it has no contacts with Nevada.
2 Plaintiffs argue that their allegation of alter ego should be sufficient to maintain CBC as a party
3 to this case.

4 DISCUSSION

5 Plaintiffs have the burden of establishing personal jurisdiction by demonstrating
6 jurisdiction is: (1) permitted under the applicable state's long-arm statute and (2) that the
7 exercise of jurisdiction does not violate federal due process." *Ziegler v. Indian River Country*,
8 64 F.3d 470, 473 (9th Cir. 1995). The personal jurisdiction of a federal court is limited to the
9 breadth of the state court's personal jurisdiction in the state in which the federal court sits. *Omni*
10 *Capital Int'l v. Rudolph Wolff & Co., Ltd.*, 484 U.S. 97, 104–05, 108 S. Ct. 404 (1987). Under
11 N.R.S. § 14.065, Nevada state courts have personal jurisdiction limited only by the Nevada and
12 United States Constitutions. *Graziose v. American Home Prod. Corp.*, 161 F.Supp.2d 342, 345
13 (D. Nev. 2001) (jurisdiction may be exercised to the extent "not inconsistent with the
14 Constitution of this state or the Constitution of the United States").

15 Personal jurisdiction has been limited under the Constitution to defendants that have
16 "certain minimum contacts with [a state] such that the maintenance of a suit does not offend
17 'traditional notions of fair play and substantial justice.'" *Core-Vent Corp. v. Nobel Indus.*, 11
18 F.3d 1482, 1485 (9th Cir. 1993) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316
19 (1945)). Sufficient minimum contacts may be shown through specific jurisdiction, wherein the
20 specific interaction with the forum relating to the cause of action gives rise to the contacts, or
21 through general jurisdiction, wherein the contacts with the forum are systematic and continuous,
22 warranting the exercise of personal jurisdiction. If such contacts are established, a court must
23 still determine that exercising personal jurisdiction would not offend the "traditional notions of
24 fair play and justice." *Int'l Shoe Co.*, 326 U.S. at 316.

25 CBC argues that this Court cannot exercise jurisdiction over it because it has no contacts

1 with Nevada. CBC attaches to its motion to dismiss an affidavit decrying any contact with
2 Nevada whatsoever. Plaintiffs counter that their allegations of contact are sufficient, and
3 moreover, they allege CBC is merely an alter ego for Defendants Colucci and Deluca and
4 Copper Sands Realty, which should allow the Court to exercise jurisdiction over CBC. Personal
5 jurisdiction over the latter individuals and entity is undisputed.

6 Plaintiffs rely primarily on *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406
7 (9th Cir. 1977). The Ninth Circuit held that the district court erred in dismissing an action
8 against a foreign company for lack of personal jurisdiction. Specifically, the court concluded
9 that the court should have determined the existence of potential intercorporate agency or alter
10 ego provided a basis for exercising personal jurisdiction. *Id.* at 419–20. The court noted:

11 A foreign shareholder should not be permitted to own a shell American
12 corporation that engages in wrongful conduct for which the foreign shareholder
13 may potentially be held liable on an alter ego theory, but for which he cannot be
14 reached because he claims that the corporation did not act as his agent to further
15 his business affairs. Common sense dictates that it would be neither
unreasonable nor unfair to reach the shareholder in those circumstances, for he
has presumably entered into the ownership and control of the offending
corporation intentionally.

16 *Id.* at 421. Accordingly, the court remanded the case for the district court to consider these
17 theories as a basis for personal jurisdiction.

18 Despite Plaintiffs' reliance on *Wells Fargo & Co.*, it is easily distinguishable from the
19 instant action. First, the only connections to Nevada that Plaintiffs have alleged are some
20 overlap of officers for CBC and other Defendants, and a copy of a document allegedly showing
21 the proceeds of the sale of a unit in Copper Sands Condominiums credited to the account of
22 CBC. (#38, Ex. 7). Unlike *Wells Fargo & Co.*, where the foreign corporation owned the
23 defendant corporation, there is no evidence of such a relationship in this case. *See Wells Fargo*
24 *& Co.*, 556 F.2d at 421. And the existence of a document showing proceeds going to an account
25 named "CBC INVESTMENTS" is also insufficient to establish personal jurisdiction over CBC.

1 Moreover, other than conclusory allegations, Plaintiffs have failed to allege even the existence of
2 facts that would support applying alter ego or exercising personal jurisdiction over CBC.

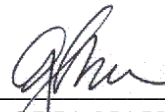
3 Plaintiffs argue that if the Court finds it has not met its burden, CBC's motion should be
4 denied to allow for further jurisdictional discovery. It is within the discretion of this Court to
5 determine whether or not to permit such discovery. *See Pebble Beach Co. v. Caddy*, 453 F.3d
6 1151, 1160 (9th Cir. 2006) (holding it was a proper exercise of discretion to refuse additional
7 jurisdictional discovery, "where a plaintiff's claim of personal jurisdiction appears to be both
8 attenuated and based on bare allegations in the face of specific denials made by the defendants,
9 the Court need not permit even limited discovery"). But as CBC points out, this litigation is not
10 in its infancy; it has been ongoing for over two years. There has already been significant
11 discovery in this case. Further, the Court need not require CBC to remain in the case in order for
12 discovery to be conducted as to whether or not there is a basis for personal jurisdiction over
13 CBC.

14 Accordingly, the Court finds that Plaintiffs have not met their burden of showing that this
15 Court has personal jurisdiction over CBC. Therefore, the Court will dismiss CBC from the suit.
16 However, this dismissal is without prejudice, and CBC may again be joined to the suit if
17 Plaintiffs are able to establish a basis for personal jurisdiction in the course of discovery.

18 CONCLUSION

19 IT IS HEREBY ORDERED THAT Defendant CBC's Motion to Dismiss for Lack of
20 Personal Jurisdiction (#30) is GRANTED and CBC is dismissed without prejudice.

21 DATED this 9th day of August, 2010.

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24 _____
25 Gloria M. Navarro
United States District Judge